IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5837 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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RAFIQBHAI RAHIMBHAI MUGHAL - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR NIRZAR S DESAI for the Petitioner
MS FALGUNI PATEL, A.G.P. for Respondent Nos. 1,2,3 and 5,
MR TUSHAR MEHTA for Respondent No. 4,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/02/2006

ORAL JUDGMENT

1. In the present petition, the petitioner who is President of Amerli Municipality has challenged an order dated 01.06.2002 passed by the Director of

Municipalities, by which the Director in exercise of powers under Section 37 of the Gujarat Municipalities Act (hereinafter to be referred to as “the said Act” for short), was pleased to remove the petitioner as President and as a Councilor of the Municipality. He was also further pleased to order initiation of proceedings under Section 70 of the said Act.

2. The petitioner was a elected in-charge President of the Amreli Municipality. For certain alleged misconduct show-cause notice came to be issued against him on 11.06.2001 calling upon him to state why steps should not be taken for disqualification and removal under the provisions contained in Sub-section(1) of Section 37 of the said Act. The petitioner denied the charges and contested the proposal. The Director of the Municipality however, by his impugned order dated 1.06.2002 ordered his removal as President and the member of the Municipality. He also directed that the proceedings under Section 70 of the said Act be initiated against him.

2.1 During the pendency of the petition, this Court by order dated 26.06.2002 directed that the operation of the order for removal shall stand stayed so far as the capacity of the petitioner as a Councilor of the

Municipality is concerned, however, his removal as President of the Municipality was not stayed. It is not in dispute that the term of the Municipality has come to an end and newly elected body has been constituted. Learned Advocate for the petitioner submitted that the petitioner has not contested the election afresh.

3. In that view of the matter, the question of removal of the petitioner either as a President or as a member has become infructuous. In terms of the provisions contained in Sub-Section(2) of Section 37 of the said Act, further question of his disqualification for contesting elections for a period of four years still survives. Atleast till June, 2006, such issue shall retain its significance. In that view of the matter, I have heard learned Advocates for the parties with respect to challenge of the impugned order on merits.

4. Learned Advocate Shri Nirzar Desai for the petitioner submitted that the petitioner was not granted sufficient opportunity to defend himself. From the averments made in the petition and in particular paragraph 3.7 thereof, he pointed out that the proceedings before the Director were fixed on 15.05.2002. Since it was not possible for him to remain present on

the said date, he had sent telegram seeking adjournment. Adjournment was granted and the hearing was fixed on 27.05.2002. However, the petitioner was informed about the same only on 23.05.2002 through registered A.D. communication which the petitioner received on 30.05.2002 i.e. after the date of hearing. The Director without awaiting for participation of the petitioner concluded the proceedings on 27.05.2002. He therefore, submitted that the Director proceeded *ex-parte* without valid reasons.

5. On the other hand Ms. Falguni Patel, learned Assistant Government Pleader submitted from the record of the impugned orders that the date of hearing of 27.05.2002 was sought to be communicated to the petitioner in person. He however refused to receive the communication, due to which it had become necessary to send written communication through post which was done on 23.02.2005.

6. I find that the Director showed undue haste in concluding the proceedings. When the elected President of the NagarPalika was being called upon to explain certain charges which would result into his removal and disqualification, it is necessary that due care is taken

to ensure that reasonable opportunity of being heard is given to him before concluding the charges. It is not in dispute that communication was sent to the petitioner through post on 23.05.2002 indicating the next date of hearing as 27.05.2002. The Director ought to have considered whether such communication is duly received or not. If the petitioner had refused to accept the communication being tendered to him personally and if the Director was of the opinion that the same amounts to sufficient service to him, then there was no further necessity of sending communication through post. On the other hand, if it was found necessary that next date of hearing was required to be conveyed to the petitioner through post, it ought to have been verified whether actually the petitioner received the same before the date of hearing. When the elected President is sought to be dislodged from his post and the ultimate conclusion therein made also result in his disqualification for a period of four years, such steps should be taken with due care after following the principles of natural justice and giving the fullest opportunity to the person concerned to defend himself.

7. In the present case, I find that the petitioner was not given sufficient opportunity to defend himself. He

had agitated that necessary documents were not supplied to him. He had also shown his willingness to participate in the hearing. If on one occasion, he could not remain present due to late communication, the Director ought not to have concluded the hearing which betrays certain undue haste on his part. In the result impugned order is quashed. Normally when the Court interferes with the order passed by the Administrator on the ground of insufficient opportunity of hearing, natural corollary thereof would be to remand the proceedings to proceed further from the stage from where the defects were detected. In the facts of the present case, I find that no useful purpose would be served in remanding the proceeding. Firstly, the term of the petitioner as a member as well as President of the Municipality has expired. Under the directions of the Court, the petitioner continued to discharge his duties as a member but was prevented from acting as a President. The period of disqualification is virtually over. If the petitioner has misapplied the funds of the Municipality, this aspect is being investigated separately in the proceedings under Section 70 of the said Act to which I do not intend to cause any interference. Proceedings under Section 37 of the said Act which ultimately culminated into the impugned order being passed against the petitioner are

terminated. This however has no bearing on the proceedings under Section 70 of the said Act, which is stated to have been instituted against the petitioner, as I have expressed no opinion on his involvement in the alleged charges.

8. In the result, the petition is allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

[Akil Kureshi, J.]

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